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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/701,622	06/19/2001	Cocnraad Jan Spaans	POLYGANICS-1	8926
7265	7590	02/23/2004	EXAMINER	
MICHAELSON AND WALLACE PARKWAY 109 OFFICE CENTER 328 NEWMAN SPRINGS RD P O BOX 8489 RED BANK, NJ 07701			GORR, RACHEL F	
			ART UNIT	PAPER NUMBER
			1711	

DATE MAILED: 02/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/701,622

Applicant(s)

SPAANS ET AL.

Examiner

Rachel F. Gorr

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 67, 69, 70, 79, 80, 86, 87, 89-98 and 101-115 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 67, 69, 70, 79, 80, 86, 101-111 and 113-115 is/are allowed.
- 6) ☒ Claim(s) 87, 89-92, 95 and 98 is/are rejected.
- 7) ☒ Claim(s) 93, 94, 96, 97 and 112 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

1. Claims 97 and 112 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Claims 97 and 112 are broader in scope than claims 87 and 102, which read on only polyester soft segments. The word "block" is misspelled in claim 112.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 87, 89-92, 95 and 98 are rejected under 35 U.S.C. 103(a) as being unpatentable over de Groot (New Biomedical ...) in view of Cohn.

4. De Groot discloses polyurethanes made from caprolactone polyester polyols and butane diisocyanate (see summary). He shows making polyurethanes having a homogeneous block structure. He uses these polyurethanes for medical applications. He differs from the claims by extending the polyurethane with a diamine rather than a diol and by not showing porous polyurethanes.

5. Cohn teaches that polyurethanes for medical applications can be chain extended with diols or diamines (col. 4, lines 1-18).

6. It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute a diol for the diamine of de Groot because Cohn teaches that these polyurethanes are more easily dissolved or melt processed for shaping medical articles. It would have been obvious to make porous polyurethanes for applications such as scaffolds.

7. Applicant's arguments filed 1-20-04 have been fully considered but they are not persuasive. The applicants argue that it wouldn't be obvious to combine the references because the Cohn reference isn't directed to biodegradable polymers. The applicants' claims aren't directed to degradable polymers.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

8. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

9. Claims 93, 94 and 96 are objected to for depending on rejected claims.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rachel F. Gorr whose telephone number is 571-272-1072. The examiner can normally be reached on Mon., Tues., Thurs., Fri., from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jim Seidleck can be reached on 571-272-1078. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

R.G.  
Feb. 17, 2004

  
RACHEL GORR  
PRIMARY EXAMINER